

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE ISBELL,

Plaintiff-Appellant,

V

ROBERT HAIGHT and SUSAN HAIGHT,

Defendants-Appellees.

UNPUBLISHED

January 16, 2007

No. 269249

Kent Circuit Court

LC No. 05-002208-NI

Before: White, P.J. and Zahra and Kelly, JJ.

ZAHRA, J. (*dissenting*)

I respectfully dissent. I conclude the lower court did not err in granting summary disposition to defendants, on plaintiff's claim that she suffered a serious impairment of an important body function, because the impairment did not affect plaintiff's general ability to lead her normal life. I would affirm.

Under the no fault act, MCL 500.3101 *et seq.*, a person is subject to tort liability for noneconomic loss caused by his ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement. MCL 500.3135(7); *Kreiner v Fischer*, 471 Mich 109, 120-121; 683 NW2d 611 (2004), reh den 471 Mich 1201 (2004). A serious impairment of body function is an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life. MCL 500.3135(7). A court should consider "(a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment, and (e) the prognosis for eventual recovery." *Kreiner, supra*, 471 Mich at 133-134. In determining whether a plaintiff is able to lead his or her normal life, the court should compare the plaintiff's life before and after the injury as well as the significance of any affected aspect of the plaintiff's life. *Kreiner, supra*, 471 Mich at 132-133. "[D]etermining whether a plaintiff is 'generally able' to lead his or her normal life requires considering whether the plaintiff is, 'for the most part' able to lead his or her normal life." *Kreiner, supra*, 471 Mich at 130. The Supreme Court explained the test as follows:

Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's "general ability" to

lead his normal life has not been affected and he does not meet the “serious impairment of body function” threshold. [*Kreiner, supra*, 471 Mich at 131.]

In this case, the accident resulted in an exacerbation of plaintiff’s preexisting degenerative disc disease. Plaintiff initially received conservative treatment for her injury and received no employment restrictions. During this period, it cannot reasonably be said that the course or trajectory of plaintiff’s life had changed.

Because of plaintiff’s continued pain, she treated with a pain specialist. Plaintiff had lifting, bending, and twisting restrictions placed on her for about six months. However, such restrictions again did not change the course or trajectory of plaintiff’s life. Plaintiff was able to run errands, do housekeeping, participate in some art and crafts, cook, help her daughters with their homework, and travel. Plaintiff’s restrictions were self-imposed and situational because of her subjective experience of pain. Plaintiff was able to perform her hobbies and volunteer for service activities after her accident but did not do so primarily because she was not sure how she would feel throughout the day.

Still experiencing pain, she consulted an orthopedic surgeon who performed a discectomy and spinal fusion. Because of the surgery, plaintiff was in a back brace for about three months and then was expected to gradually wean herself off the brace over the following three months. Plaintiff was not generally able to perform her former activities while she was recovering post surgery and wearing a back brace. However, during plaintiff’s deposition, which occurred within a few weeks of the discectomy, plaintiff indicated that she was improving.

The facts presented in this case are similar to the facts at issue in *Nicke v Miller*, unpublished opinion per curiam of the Court of Appeals, issued January 26, 2006 (Docket No. 263929), rev’d in lieu of gtg lv, ___ Mich ___; 723 NW2d 908 (Docket No. 130666, decided December 1, 2006). There, as a result of an automobile accident, plaintiff’s pre-existing back condition was exacerbated. Plaintiff’s treatment included discectomy surgery to her neck and acromioplasty surgery to her right shoulder. This court concluded that the severity of the surgical procedures performed on plaintiff required the lower court to consider whether plaintiff suffered from a temporary serious impairment of an important bodily function. The Supreme Court peremptorily reversed the Court of Appeals and remanded for re-entry of judgment originally entered by the trial court in favor of the defendant.

On the record presented in this case, plaintiff has shown that she had an objectively manifested medical injury to an important body function and that she experienced two periods of restrictions for an aggregate of approximately six months. However, plaintiff has not shown that as a result of the injuries sustained in the automobile accident she was forced to materially change the course of her life from what she was doing before the accident. I would affirm.

/s/ Brian K. Zahra